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Testimony of Kathleen Tetrault
CT Bar Association Elder Law Section

In SUPPORT of
Senate Bill 162
AN ACT CONCERNING A COMMUNITY SPOUSE'S ALLOWABLE ASSETS

Aging Committee
February 25, 2016

Senator Flexer, Representative Serra, honorable committee members:

My name is Kathleen Tetreault, and I am an elder law and estate planning attorney practicing with the law firm of Czepiga Daly Pope in Hartford, Connecticut. This afternoon, I have the distinct privilege of testifying on behalf of the Elder Law Section of the Connecticut Bar Association, in support of Senate Bill 162: An Act Concerning A Community Spouse's Allowable Assets. The purpose of this Bill is to prevent the spouse of an individual requiring long-term care from falling into financial impoverishment. This would effectively preserve the Congressional Intent of the Medicare Catastrophic Coverage Act of 1988 ("MCCA"), and provide Community Spouses with additional stability during an otherwise tumultuous time. Enacting this Bill will not only be budget-neutral, but it will also result in budgetary savings for the State.

OVERVIEW OF COMMUNITY SPOUSE PROTECTED AMOUNT:

Congress passed the MCCA in 1988 to prevent the spouse of an individual requiring long-term care (referred to as the "Community Spouse") from spousal impoverishment. Pursuant to MCCA, when a married couple in Connecticut applies for nursing home benefits, the general rule is that the Community Spouse is permitted to keep the home residence plus the lesser of 50% of the couple's remaining assets, or $119,220. The amount of money that the Community Spouse can keep is called the "Community Spouse Protected Amount" (referred to as the "CSPA"). The couple's remaining assets are deemed by the State to belong to the institutionalized spouse and must be spent down before the institutionalized spouse will be eligible for nursing home benefits.

If a couple's total assets are under the maximum CSPA of $119,220.00 (in 2016), it is our position that the Community Spouse should be allowed to keep the full CSPA without having to spend down anything in order for the institutionalized spouse to be eligible for Medicaid.

For example, assume for illustrative purposes that Wendy and Harold are a married couple. Harold has Alzheimer's and recently entered a nursing home for long-term care. Harold must now enroll in Medicaid to afford the costs of his care. On the date of institutionalization, Wendy and Harold's total assets are $50,000. For purposes of determining long-term care Medicaid eligibility, their assets are divided in half, leaving Wendy and Harold with $25,000 each. Under the current law, the Community Spouse, Wendy, will only be allowed to keep $25,000, and the $25,000 deemed to the institutionalized spouse, Harold, must be spent down in order for him to be eligible for long-term care.

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Significantly, the State hopes that Wendy will spend down the $25,000 on her husband's care at the nursing home. But in reality, although the $25,000 is deemed to belong to Harold, Wendy is allowed to spend his deemed $25,000 on her own needs. Thus, what happens in all cases of this type is that the Community Spouse will spend the $25,000 on items that are necessary for their own well being, including home repairs or purchasing prepaid burial arrangements. This is, essentially, the proverbial rainy day and, in this example, Wendy will spend the funds on positioning herself to be as financially secure as possible for her future, given the scare resources available.

Under the proposed legislation, the Community Spouse would be able to retain the entire $50,000 sum, because it is less than the maximum CSPA of $119,220. Retaining the additional $25,000 will prevent total impoverishment of the Community Spouse. While $25,000 is a nominal sum to the State, it is of paramount importance to the Community Spouse's stability. Please refer to additional examples attached as **Exhibit "A**,**"** which illustrate the inequity of a spend down when the total sum of the couple's assets is de minimis.

LEGISLATIVE HISTORY

On May 27, 2010, P.A. 10-73 was signed into law (which was codified as Connecticut General Statutes Section 17b-261k). P.A. 10-73 was identical to S.B. 162, in that it allowed a Community Spouse to keep the maximum amount of assets under federal law when the other spouse required long term care.

Subsequently, C.G.S. Section 17b-261k was repealed (P.A. 11-61, biennial budget) as of July 1, 2011. The law was repealed based on unfounded claims by the Department of Social Services (DSS) that the law cost the State in excess of $30 million dollars per year. However, during a public hearing before the Human Services Committee on March 15, 2011, when questioned by Senator Joseph Markley as to how the purported $30 million/year cost to the State had been derived, then Acting Commissioner Starkowski testified that in fact, he did not have any data to support DSS's assertion that P.A. 10-73 had cost the State in excess of $30 million, or that it would result in such a cost to the State in each year going forward. He merely stated the numbers were 1)"intuitive" and 2) based on "worker experience"; that it was a 3) "difficult number to quantify"; and 4) that "the Eligibility Unit doesn't track the numbers." Neither the Office of Policy and Management nor DSS has been able to substantiate that the State has sustained any losses during the time the law was in effect. Conversely, neither OPM nor DSS has been able to document the savings to the State that they claimed would be realized from July 1, 2011, the date P.A. 10-73 was repealed, to date.

ARGUMENTS SUPORTING PASSAGE OF S.B. 162

It is our position that passing S.B. 162, would be budget-neutral, and would result in fiscal savings to the State. Further, this legislation would fulfill the purpose of the MCCA by preventing spousal impoverishment.

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1. Proposed Legislation is Budget Neutral. The proposed legislation would be budget neutral to the State of Connecticut because no delay or deferral of payment to the nursing home by the State of Connecticut is achieved by forcing the Community Spouse to spend down paltry family resources. The spend down amount is not going to the nursing home—the Community Spouse will spend it on their own needs. Regardless of whether the well spouse is allowed to keep $25,000 or $119,220, the State will still begin to pay for the ill spouse's nursing home care at the same time because spend down is easily achieved by the purchase of modest items to benefit the community spouse, and not by payment of the spend-down amount to the nursing home. Further, as previously mentioned, neither DSS nor OPM have ever provided any evidence in support of its claims that this proposed legislation would bear a negative fiscal impact.

2. Proposed Legislation Will Save State Funds. Not only is the proposed legislation budget neutral, but the State will save money: There are many instances under existing law where a Community Spouse is entitled by law to keep more than the CSPA amount derived from the 50% formula. However, the DSS intake worker has no authority to allow the Community Spouse to retain the additional assets; the Community Spouse must request a Fair Hearing and must demonstrate why he/she is entitled to receive the additional assets. A Fair Hearing absorbs the time of the intake worker and Hearing Officer. A streamlined process whereby the Community Spouse is allowed to keep the maximum CSPA of $119,220 will result in fewer administrative Fair Hearings being requested and will result in the faster processing of Medicaid applications where a spend down would otherwise be required. This will result in a savings to the State of all the costs associated with Fair Hearings and may allow intake workers to be reassigned to other duties within DSS rather than the State having to hire additional staff.

Moreover, allowing the Community Spouse to retain the maximum CSPA of $119,220 would enable such individual to maintain a degree of personal welfare and independence that might otherwise be sacrificed if forced into impoverishment. Impoverishing the Community Spouse could very well result in said Community Spouse relying on state-funded aid, which he/she would not have otherwise needed if permitted to keep $119,220.

3. **Proposed Legislation Will Preserve Intent of the MCCA.** Enacting the proposed legislation will prevent the Community Spouse from suffering a hardship by being forced to spend down family assets, rather than saving those assets to maintain stability within the community. In reality, when a Community Spouse is forced to keep the maximum of 50% of the couple's assets up to $119,220, the State does not receive the benefit of the excess sum. It is nonsensical that a Community Spouse should be forced to *spend* money—that never benefits the State—when he/she could *save* that money to live outside the grasp of financial strife.

Thank you for your time and consideration of this important issue. We strongly urge the members of this Committee to act favorably with regard to S.B. 162.

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EXHIBIT "A"

Example 1. Assume that the couple's assets on the date of institutionalization=

$60,000.00:

$$\frac{\$60,000.00}{2} = \$30,000.00$$

CURRENT LAW: The Community Spouse gets to keep only $30,000.00 of the total assets, and the remaining $30,000.00 has to be spent down before the institutionalized spouse is eligible for Medicaid/Title 19. In this example, 50% of the assets ($30,000.00) is lesser than $119,220.00, and that is all the community spouse is allowed to keep.

PROPOSED LAW: The Community Spouse gets to keep the entire $60,000.00 because it is less than $119,220.00.

Example 2. Assume that the couple's assets on the date of institutionalization=

$25,000.00:

$$\frac{\$25,000.00}{2} = \$12,500$$

CURRENT LAW: The Community Spouse gets to keep $23,844.00 of the $25,000.00 because the Community Spouse gets to keep a minimum of $23,844.00 in assets in 2016. However, $1,156.00 would still be required to be spent down before the institutionalized spouse would be eligible for Medicaid/Title 19 (the difference between $25,000-23,844.00).

PROPOSED LAW: The Community Spouse gets to keep the entire $25,000.00.

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Example 3. Assume that the couple's assets on the date of institutionalization=

$125,000.00:

$$\frac{\$125,000.00}{2}=\$62,500.00$$

CURRENT LAW: The Community Spouse gets to keep only $62,500.00 of the total assets because 50 % ($62,500.00) is lesser than $119,220.00. The remaining $62,500.00 has to be spent down before the institutionalized spouse is eligible for Medicaid/Title 19.

PROPOSED LAW: The Community Spouse would be able to keep $119,220.00 out of the total assets of $125,000.00 and only $5,780 would have to be spent down (the difference between $125,000.00 and 119,220.00).

Example 4. Assume that the couple's assets on the date of institutionalization=

$480,000.00:

$$\frac{\$480,000.00}{2}=\$240,000.00$$

CURRENT LAW: The Community Spouse gets to keep only $119,220.00 of the total assets because $119,220.00 is lesser than of 50% of the assets ($240,000.00). The remaining assets of $120,780 will have to spent down before the institutionalized spouse is eligible for Medicaid/Title 19.

PROPOSED LAW: Same as current law.